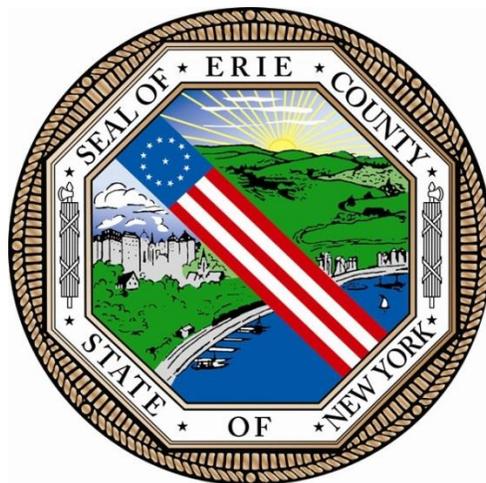


April 2021

**A Report on Managerial Confidential Overtime for First
Quarter 2021**



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April 16, 2021

Erie County Legislature
92 Franklin Street 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed a report on overtime expenses charged to funds 110, 252 and 253 in the first quarter of 2021, with particular focus on managerial confidential overtime.

Our objectives were to:

- Determine the amount of overtime expenses attributed to funds 110, 252 and 253.
- Determine which of these expenses were expended to managerial confidential (MC) employees.
- Compare these amounts to overtime expenditures in years past.
- Update the amount expended for food from fund 252.

To accomplish these objectives, we reviewed expenses attributed to funds 110, 252 and 253.

This report serves as both an update to previous reports regarding overtime expensed to fund 252, as well as providing historical information regarding MC overtime. A meeting scheduled prior to the August, 2020 break to discuss overtime was postponed, with the intent to meet soon for the discussion. To date, this meeting has not yet been rescheduled. This updated information may be useful at such a discussion when it occurs.

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Background

On March 25, 2020, the United States Senate passed the “Coronavirus Aid, Relief and Economic Security Act” (CARES) as amended. The United States House of Representatives approved the measure on the following day, and the bill was signed into law on March 27, 2020.

The CARES Act provided significant aid to local governments to combat COVID-19. Erie County received \$160 million in federal funding. Erie County created a special fund to account for expenses permissibly reimbursed by CARES Act governmental funding. The fund is identified as fund 252. The money in fund 252 can be used for various purposes related to combatting COVID-19. These purposes include wages to individuals whose tasks are to substantially address COVID-19, outfitting offices and other areas to reduce potential exposure to COVID-19, fortifying capacity to work remotely to avoid exposure to COVID-19, and supplies and protective gear to guard against COVID-19, to name just a few permissible uses.

As stated, a permissible use of CARES Act funding is to pay employees whose efforts are substantially devoted to addressing COVID-19. As a result, some employees have been hired specifically for such tasks, while others have been authorized overtime for such tasks. The tasks needed to address COVID-19 are varied, and may be different from tasks typically undertaken by employees in their daily activities. At the time of passage, municipalities were required to spend the funds by December 31, 2020. In December, 2020, the deadline was extended so that funds that were determined to not be needed in 2020 must now be expended by December 31, 2021.

Subsequently, an additional COVID-related spending package named the American Rescue Plan Act of 2021 (ARPA) has been approved which will provide Erie County with an additional \$178 million. These funds can be spent on response to the COVID-19 emergency, compensating for lost revenue for governments as the result of COVID-19, and investments in water, sewer and broadband infrastructure. It specifically cannot be used to fund pensions or offset revenue decreases as the result of a tax cut since March 3, 2021. ARPA funds must be expended for costs incurred through December 31, 2024.

At the prompting of legislature questions and commentary, our office has previously submitted reports quantifying overtime and holiday worked pay expended to MC employees, overtime and holiday worked pay expended to employees represented by bargaining units, pay for employees who did not report to work and were unable to perform work remotely, the utilization of the imprest fund for expenditures charged to fund 252, and the use of fund 252 for food purchases for individuals quarantining due to COVID-19, as well as employees who report to work. Recommendations were made seeking clarifications to questions raised during the composition of those reports.

This report examines total overtime for employees expended from fund 110 (the general fund), fund 252 (COVID-19 response), and fund 2523 (2021 COVID response). Overtime for the purposes of this report includes a range of categories, including overtime, holiday worked, call in pay, stadium pay and others. Further, this report examines payments made from January 22,

2021 through April 2, 2021. Paycheck 1 of 2021 included thirteen work days in 2020 and, as such, was included on a previous report.

First Quarter Overtime Expenditures

Below are the overtime expenditures for pay period two through pay period seven in 2021. As stated above, pay period one included thirteen days in 2020 and January 1, and has been included in a previous report regarding 2020.

Fund 110 is the county's general fund. Fund 252 and Fund 253 were created to account for expenditures made specifically for combatting COVID-19. As such, total overtime expenditures are included, as well as the breakdown between expenditures charged to Fund 110 and those charged to Fund 252 and 253.

Total (Funds 110, 252 & 253 – All employees): \$5,042,012 (128,691 hours for 2,273 employees)

Total (Fund 110 – All employees): \$4,206,418 (112,179 hours for 2,097 employees)

Total (Funds 252 & 253 – All employees): \$835,594 (16,512 hours for 176 employees)

Historical Managerial Confidential Overtime

When examining current overtime expenditures for MC employees, it is helpful to know overtime expenditures in previous years. As such, MC overtime expenditures for the years 2017-2020 are described below. Because questions, when asked, frequently distinguish between MC and MC Sheriff employees, the expenditures are broken down as such. The expenditures for 2017-2019 include only Fund 110 overtime expenditures. All categories of overtime are included, including overtime, holiday worked, call in pay and stadium pay.

MC Sheriff expenditures are further broken down to distinguish between stadium pay and other categories of overtime. As described in an audit report in 2020, stadium pay is overtime paid by The Buffalo Bills and Buffalo Sabres for security services provided at events at the football stadium and hockey arena. As such, these amounts are reimbursed to the county so that the services are not ultimately financed by taxpayers.

Fund 110 is the county's general fund. Fund 252 and Fund 253 were created to account for expenditures made specifically for combatting COVID-19. As such, these funds did not exist prior to 2020 and are not included in overtime expenditures in 2017-2019.

2017: Total OT for MC Employees (Fund 110): \$10,977 (7 employees; 395 hours)

2017: Total OT for MC Sheriff Employees (Fund 110): \$234,796 (17 employees; 3,623 hours)

2017: Total OT for MC Sheriff Employees (Fund 110 (excluding Stadium Pay)): \$40,040 (6 employees; 622 hours)

2018: Total OT for MC Employees (Fund 110): \$10,213 (16 employees; 215 hours)

2018: Total OT for MC Sheriff Employees (Fund 110): \$248,162 (14 employees; 3,364 hours)

2018: Total OT for MC Sheriff Employees (Fund 110 (excluding Stadium Pay)): \$5,299 (5 employees; 75 hours)

2019: Total OT for MC Employees (Fund 110): \$29,020 (17 employees; 527 hours)

2019: Total OT for MC Sheriff Employees (Fund 110): \$331,322 (13 employees; 4,364 hours)

2019: Total OT for MC Sheriff Employees (Fund 110 (excluding Stadium Pay)): \$21,968 (12 employees; 312 hours)

2020: Total OT for MC Employees (Funds 110 & 252): \$651,212 (50 employees; 8,026 hours)

2020: Total OT for MC Sheriff Employees (Funds 110 & 252): \$733,632 (13 employees; 9,829 hours)

2020: Total OT for MC Sheriff Employees (Funds 110 & 252 (excluding Stadium Pay)): \$634,023 (13 employees; 8,541 hours)

Managerial Confidential Overtime in First Quarter

The amount of overtime expenditures paid to MC employees for pay periods two through seven are:

Total OT for MC Employees (Funds 110, 252 & 253): \$80,276 (15 employees; 787 hours)

Total OT for MC Employees (Funds 252 & 253): \$76,033 (13 employees; 730 hours)

Total OT for MC Employees (Fund 110): \$4,244 (4 employees; 88 hours)

Total OT for MC Sheriff Employees (Funds 110, 252 & 253): \$67,591 (13 employees; 811 hours)

Total OT for MC Sheriff Employees (Funds 252 & 253): \$18,839 (11 employees; 224 hours)

Total OT for MC Sheriff Employees (Fund 110): \$48,752 (12 employees; 587 hours)

Total OT for MC Sheriff Employees (Fund 110 (excluding Stadium Pay)): \$23,587 (10 employees; 275 hours)

Total overtime paid to MC Sheriff employees for the first quarter of 2021, excluding Stadium Pay, exceeds the total overtime paid to MC employees for each of the whole years of 2017, 2018 and 2019.

Total overtime paid to MC employees for the first quarter of 2021 exceeds the total overtime paid to MC employees for the whole years of 2017, 2018 and 2019 combined.

The amount of total overtime expenditures to MC employees ranged from \$24 to \$52,274. MC employees receiving greater than \$5,000 in overtime in First Quarter:

<u>Office</u>	<u>Title</u>	<u>Hours</u>	<u>Amount</u>	
Health	Commissioner of Health	352	\$52,274	
Sheriff	Undersheriff	126	\$12,453	(\$7,792 without Stadium Pay)
Sheriff	Chief of Administration	130	\$10,923	
Emergency Services and Homeland Security	Deputy Commissioner - Preparedness	146	\$8,990	
Sheriff	Superintendent	93	\$8,371	(\$7,648 without Stadium Pay)
Emergency Services and Homeland Security	Deputy Commissioner	115	\$7,065	
Sheriff	Chief of Special Services	72	\$5,982	(\$2,064 without Stadium Pay)
Sheriff	Chief Deputy Sheriff	71	\$5,909	(\$1,509 without Stadium Pay)
Sheriff	Chief Deputy - Civil	67	\$5,106	(\$949 without Stadium Pay)

Managerial Confidential Compensatory Time Policy Change

At first glance, it is notable that the percentage of overtime expended for MC employees in the first quarter of 2021 was 11.4%, which is a decrease from 23.1% in 2020. As a reminder, MC employees comprise 6.5% of the county workforce. However, recent changes to the compensatory time for MC employees policy may cause the 11.4% to be artificially low.

Prior to January 8, 2020, MC employees could earn compensatory time at a rate of time-and-a-half for hours worked in excess for 40 hours per week. The amount of compensatory time that could be banked was capped at 80 hours. The new policy increases that cap to 200 hours. After the 200-hour cap is reached, MC employees will then earn paid overtime for hours worked in excess of 40 per week.

However, if at the end of the year the employee has compensatory time banked in excess of 80 hours, the employee will be paid for those hours to bring the bank down to 80 hours.

As such, the new policy prevented MC employees from earning paid overtime this year until they reached the 200-hour cap. At the end of the year, it is possible that the compensatory banks will

be paid out to bring MC employees back down to 80 hours. For many MC employees, the policy creates a de facto deferred compensation mechanism in which the employees will be paid three weeks salary at the end of the year for overtime worked previously. As such, overtime paid to MC employees as a percentage of total overtime cannot be accurately calculated until the end of the year after these payments are made.

Aside from this deferred compensation mechanism, there is another notable effect of this policy. The situation may arise whereby an employee may receive a salary step increase during the year, or possibly may be promoted to a higher job group during the year. This would result in the employee who receives a payout for excess compensatory time at the end of the year being paid at a rate higher than the rate at which it was earned.

At the same time that the MC compensatory policy was changed, a change to the sick time non-usage incentive was also made. The previous policy incentivized employees to avoid using sick time by paying MC employees who used 8 hours or less of sick time during the calendar year \$500. This incentive has now been eliminated. A future report will be prepared to inform the legislature if this ultimately results in more sick time being used by MC employees and, if so, to what extent.

Whistleblower Complaints regarding Overtime

Our office has received several complaints regarding overtime. The complaints range from general complaints - such as concerns that too much overtime is being expended or that people being paid overtime should not also receive taxpayer funded meal – to more specific complaints – such as certain individuals are not doing enough work to warrant overtime. The decision to employ overtime is made by the administration and not under the control of the Office of the Comptroller. Concerns are either forwarded to the appropriate department for their consideration and action, or closed if information is lacking to pursue further action.

Even though the Office of the Comptroller does not assign or control overtime for employees of other departments, we do RECOMMEND that departments be judicious in granting overtime in a way that allows necessary tasks to be completed in a manner most respectful to taxpayers. For example, two whistleblowers expressed concerns about a commissioner administering vaccines during hours which may be considered overtime. A review of time and social media posts confirmed that such activities occurred. The commissioner earned \$140.40/hour for administering vaccinations. The same work is being performed by employees represented by the NYSNA bargaining unit for an average of \$57.53/hour. As such, for the cost of one commissioner performing a task, the same task could be performed by nearly three nurses. Employing three nurses to perform the task may allow the county to vaccinate more individuals in the same amount of time. Or, if productivity is limited by the number of vaccines available, the same number of people could be vaccinated at a lower cost.

Conclusions

In the first quarter, \$5,042,012 was expended for overtime from Fund 110, Fund 252 and Fund 253 for all Erie County employees. Of this, \$835,594 was expended from the COVID-19 relief funds (Fund 252 and Fund 253). Of this, \$94,872 was expended for MC employees.

Generally, but not for all individuals, the amount of cash overtime expended to MC employees appears to have decreased when compared to 2020. However, this cannot be fully evaluated until end-of-year payments have been made to certain MC employees, in accordance with new personnel policies. These policies increase the amount of compensatory time that an MC employee can accrue, which may then be paid at the end of the year. The policy may result in overtime being paid at a higher rate than at which it was earned.

MC employees may be performing tasks while earning overtime that could more efficiently or more economically be performed by employees from represented bargaining units. WE RECOMMEND that departments exercise care to ensure that tasks are being performed in the most cost effective manner possible.